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April 28, 2010

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Attention: Wireless Telecommunications Bureau

Re: Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104

Dear Secretary Dortch:

Cox Communications ("Cox") files this letter in response to certain assertions made in a letter filed jointly by AT&T Inc. ("AT&T") and Verizon Wireless ("Verizon") on March 12, 2010 ("*AT&T/Verizon Letter*").[1/] For the most part, the letter simply repeats arguments already made and fully addressed by Cox regarding its proposed conditions to this transaction.[2/] In two respects, however, the letter warrants further response as Verizon's arguments regarding Cox's proposal to opt into existing roaming agreements actually highlight the need for Commission intervention in this transaction.

First, Verizon falsely asserts that the "opt in" condition is unnecessary because Verizon stands ready and willing to negotiate "reasonable roaming terms" with any carrier, including Cox.[3/] Verizon further claims that it is "currently negotiating a nondisclosure agreement

1/ Letter to Marlene H. Dortch, Secretary, FCC from William E. Cook, Arnold & Porter, and Nancy J. Victory, Wiley Rein LLP, WT Docket No. 09-104 (filed Mar. 12, 2010) ("*AT&T/Verizon Letter*").

2/ Cox proposes that: (1) where, as a result of the transaction, Verizon would be the sole CDMA roaming option, Verizon should allow Cox and other providers to opt into an existing ALLTEL or Verizon roaming agreement; and (2) in any area where AT&T's conversion of ALLTEL's CDMA network to the GSM air interface would eliminate any ability to obtain CDMA roaming, AT&T should be required to maintain ALLTEL's CDMA network for a time certain. *See* Letter to Marlene H. Dortch, Secretary, FCC from Michael H. Pryor, Counsel to Cox Communications, WT Docket No. 09-104, at 1 (Feb. 12, 2010) ("*Cox Feb. 12th Letter*").

3/ *AT&T/Verizon Letter* at 7.

("NDA")" and that "the parties had a call to discuss completion of the NDA as recently as March 9."[4/] Verizon omits that Cox has been seeking to negotiate a roaming agreement since last August, and, after eight months, the parties have yet to *begin* negotiating the provisions of roaming agreement. As detailed in the attached affidavit of Bill Chandler, Cox's Director of Wireless Wholesale and Roaming, Cox first contacted Verizon on August 28, 2009 to discuss a roaming arrangement. After receiving no response, Cox, on September 22, 2009, called and left a message with Verizon's Director of Roaming. Cox still received no response and thus followed up with an email on October 13, 2009. When that failed to elicit a response, Cox escalated by having its Vice President of Regulatory Affairs, Jennifer Hightower, contact Verizon's General Counsel's office. Finally, on November 25, 2009, Verizon's Director of Roaming contacted Cox. Several weeks later, on December 17, 2009, Verizon presented Cox with a NDA. Within a week Cox provided Verizon a copy of a redlined NDA for Verizon's review.[5/]

The parties have been seeking to negotiate the NDA ever since, including the exchange of some 25 email communications and nine redlines. (An agreement on the DNA appears to have been reached and is awaiting signature as of this writing). The primary obstacle has been Verizon's insistence that Cox not disclose any information regarding Verizon's proposed roaming rates and conditions to regulatory authorities, even under a cloak of confidentiality.[6/] Given Cox's involvement in this proceeding, in which Cox has expressed serious and legitimate concern about its ability to negotiate a reasonable roaming agreement with respect to areas where Verizon is the only roaming partner available, Cox has viewed Verizon's effort as an unreasonable "gag order."[7/] Cox's experience defies Verizon's characterization that it is "ready and willing" to negotiate in good faith and highlights the need to impose an opt in condition as part of this transaction.

Second, Verizon makes overblown claims that Cox's "opt in" condition would improperly require Verizon to disclose the rates and terms of confidential contracts and unfairly advantage Cox at the expense of potential competitors.[8/] Any legitimate concerns that Verizon may have can be readily addressed. Confidentiality concerns can be handled by simply redacting the existing roaming agreements to remove any identification of the other party to the contract as

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4/ *AT&T/Verizon Letter* at 11.

5/ Declaration of Bill Chandler, ¶¶ 3-4

6/ *Id.* at ¶¶ 5-6.

7/ Cox recognizes that NDAs may well be necessary in a negotiation in which both parties may disclose certain business information. Cox's concern, however, lies with Verizon's efforts to preclude Cox from disclosing information to the FCC that the agency may view as important in its deliberations. Such disclosures can be made under seal without jeopardizing any legitimate business interest that Verizon has in protecting its proprietary information.

8/ *AT&T/Verizon Letter* at 9-10.

well as specific lists of markets and territories of the non-Alltel carrier or non-Verizon Wireless carrier. Equally without merit is Verizon's claim that the FCC's refusal in the *2007 Roaming Order* to require all CMRS providers to make all of their roaming agreements public precludes imposition of Cox's proposed condition in the context of this transaction.[9/] Cox's proposed condition is a limited response to this specific transaction that would mitigate the ability of Verizon, the largest and, in many of the effected areas the only, wireless carrier in the market that can provide CDMA roaming, to hamper competitive entry by slow rolling negotiations or proffering onerous roaming conditions. The condition simply puts Cox, a new entrant without existing agreements, in the same position that the FCC afforded existing carriers when it imposed a limited opt-in condition in the underlying merger between Verizon and ALLTEL. The condition gives "each regional, small and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless [] the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless."[10/]

One further note. The FCC's recent in-market roaming order does not resolve Cox's concerns because none of the divested areas of concern to Cox are home markets for Cox's wireless services.

Respectfully submitted,

/s/ Michael H. Pryor

Michael H. Pryor
Counsel to Cox Communications

cc: Kathy Harris
Nancy Victory
Peter J. Schildkraut
William E. Cook

9/ *AT&T/Verizon Letter* at 10 (citing *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, Report and Order, 22 FCC Rcd 15817, ¶ 62 (2007).

10/ *Verizon/ALLTEL Merger Order*, 23 FCC Rcd 17444, ¶ 178 (2008).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of AT&T INC. and CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS For Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement	)	WT Docket No. 09-104

DECLARATION OF BILL CHANDLER

1. My name is Bill Chandler. I am the Director Wireless Wholesale and Roaming for Cox Communications ("Cox"). In my position I am responsible for the negotiation of all roaming and wholesale agreements related to Cox's wireless efforts, with a particular emphasis on developing roaming agreements that enable Cox to offer voice and broadband data plans, on a regional and national basis, to our customers.

2. My purpose in making this statement is to rebut Verizon's assertions in the letter it filed jointly with AT&T on March 12, 2010 in WT Docket No. 09-104, that it is "ready and available" to negotiate with Cox to reach a roaming agreement. To the contrary, Cox has experienced numerous delays with respect to communicating and attempting to negotiate a roaming agreement with Verizon. As recounted below, it has taken nearly 8 months simply to obtain a non-disclosure agreement so that the parties could *begin* negotiations.

3. I first contacted Verizon by email on August 28, 2009 to discuss a roaming arrangement. After receiving no response or acknowledgment of my message, I called again on September 22, 2009 and left a message with Michael Burns, Verizon's Director of Roaming. I did not receive a response to my message. On October 13, 2009, I again contacted Mr. Burns and sent him an email concerning our request. I did not receive a response. I then asked Jennifer Hightower, Vice President of Regulatory Affairs, to contact Verizon Wireless's General Counsel's office. In mid-November, Ms. Hightower spoke with John T. Scott, Verizon Wireless Vice President and Deputy General Counsel, concerning the matter.

4. On November 25, 2009, I received the first response from Verizon Wireless when Mr. Burns left a voice mail concerning our request. On December 2, 2009, I met with Mr. Burns for approximately 45 minutes by phone to discuss the overall picture of a roaming agreement in which Cox would have an interest. I left the meeting with the understanding that Mr. Burns had some research to complete and that he would get back to me by December 9, 2009 with next steps. In the interval of time between our meeting and December 9, 2009 I received no communication from Mr. Burns on the topics outstanding. On December 14, 2009, I sent Mr. Burns an email asking how the parties should proceed. On December 17, 2009, Mr. Burns sent

Cox an NDA to be signed before proceeding with negotiations. On December 22, 2009, Cox sent a redlined-version of the NDA with Cox's proposed revisions back to Mr. Burns.

5. Since December 22, 2009, Cox and Verizon have exchanged voicemails and emails, and held telephone conferences concerning the scope of the NDA. On a conference call dated (3/9/2010), Cox made it very clear to Verizon that Cox wanted to retain its ability to provide information regarding the roaming negotiations to the Federal Communications Commission or other regulatory authorities in connection with this or other roaming proceedings, and that it was otherwise fine with the confidentiality provisions.

6. Based on my records, since December 22, 2009, the parties have had approximately 25 email communications (to/from), exchanged nine (9) redline versions of the proposed agreement, and have held two conference calls. The last redline from Cox to Verizon was sent on April 20, 2010, which Verizon has found acceptable. The parties appear to have finally reached agreement on the NDA.

7. Of particular concern to Cox has been Verizon's insistence that the NDA prohibit Cox from sharing any of Verizon's proposed roaming rates and conditions to regulatory authorities including the FCC, even under a cloak of confidentiality. Cox believes that this request is unreasonable, particularly if Cox needs to seek regulatory intervention with respect to negotiating the roaming agreement in the context of this or other proceedings. Further, Verizon's business interests would continue to be protected if such information was submitted to the Commission under seal.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: 4/28/2010

Signed: Bill Chandler

Bill Chandler